IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6370 of 2007()

CRIME NO.601/2007 OF HOSDURG POLICE STATION

: APPLICANT/1ST ACCUSED

N.P.MOHAMMED KUNHI, AGED 48 YEARS,
S/O. M.MOIDU, NALUPURAPPATTIL HOUSE,
PADNAKKAT P.O., KASARAGOD-671 328.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, REPRESENTING S.H.O., HOSDURG.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6370 of 2007

Dated this the 6th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. One Thamban is the 1st accused. The crux of the allegation is that in a shop room rented out to the petitioner, ie. Room No.XXVIII/608 (present No.XX/337 E), 1370 litres of kerosene meant for public distribution was found available when the police party on receipt of prior information reached the scene of the crime. The 1st accused was found available in that room. It is the case of the investigator that both accused together are carrying on the illicit activity of dealing in kerosene meant for public distribution.

2. At the time when the police party reached the scene, the 1st accused Thamban was available in the premises. From him, the name of the petitioner as the person conducting the business was also ascertained and he was shown as an accused in the F.I.R. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is not in possession of the premises from which the recovery was effected. He raised a contention that the recovery was effected

from the premises of the 1st accused Thamban. There is some strain in the relationship between the petitioner and the said Thamban and therefore the said Thamban, to vex and harass the petitioner, had unnecessarily given the name of the petitioner as the one conducting the business. It is, in these circumstances, prayed that the petitioner may now be enlarged on bail.

4. The learned Public Prosecutor after taking instructions submits that there is no merit in the contention raised by the petitioner. It is true that the said Thamban, the 1st accused is also in possession of another premises in the same building. But that premises bears the No.XX/337 F. Recovery was not effected from that premises. Admittedly, the petitioner is the one to whom possession of premises bearing No.XX/337 E has been handed over. The contraband article was recovered from the said premises bearing No.XX/337 E and not XX/337 F, which alone has been rented out to the 1st accused. In these circumstances, the learned Public Prosecutor submits that there are no circumstances whatsoever to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public Prosecutor that this is a fit case where the petitioner

must surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course. I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-